FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1647576-000

Total Deleted Page(s) = 8
Page 10 ~ b5; b6; b7C;
Page 11 ~ b5; b6; b7C;
Page 12 ~ b5; b6; b7C;
Page 13 ~ b5; b6; b7C;
Page 23 ~ Duplicate;
Page 29 ~ Duplicate;
Page 30 ~ Duplicate;
Page 36 ~ Duplicate;

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"Chandler and Southern used a number of proprietary chemical formulas belonging to Specialty to make their products." (Contempt Order at 3) Prior use of misappropriated trade secrets is sufficient evidence of likely irreparable harm to support injunctive relief. Ecolaire, Inc. v. Crissman, 542 F.Supp. 196, 205, 209 (E .D. Pa.1982).

*6 The balancing of hardships to the parties tips decidedly in favor of Specialty on the trade secret issue. On Specialty's side, we must weigh the millions of dollars expended to invent, design, and develop its trade secrets, the deliberate steps taken to ensure that its trade secrets remain confidential and the instantaneous loss in value Specialty's trade secrets would incur if the defendants were not enjoined from use or dissemination. Conversely, defendants have already profited from their conduct, including their violation of the T.R.O. The preliminary injunction would serve only to enjoin defendants from further violation of the law.

"[W]here court protection is based on bad faith and reprehensible business practices," the balancing of conflicting social and economic interests is particularly appropriate. Cataphote Corp. v. Hudson, 444 F.2d 1313, 1316 (5th Cir 1971). "[I]t is axiomatic that our laws protect private property and set standards for business competition and that obedience to such laws is in the public interest." Continental Group, Inc. v. Amoco Chem. Corp., 614 F.2d 351, 357-58 (3d Cir.1980). Certainly, there is a cognizable public interest in discouraging employees from succumbing to the temptation of easy profit by breaching their employer's trust and misappropriating proprietary information for their own gain. Specialty has made the requisite showing that the public interest would be served by this Court's entry of a preliminary injunction enjoining defendants from further abuse of the trade secrets wrongfully obtained by defendant Chandler.

Even if the formulas are not trade secrets, they are proprietary or confidential information which may be protected in equity when obtained or utilized by improper means. Durham v. Standby Labor of Georgia, 230 Ga. 558, 563 (1973).

Therefore, having satisfied the prerequisites for preliminary injunctive relief on the trade secret and unfair competition issues, the Court will grant a preliminary injunction to Specialty, the details of which are detailed toward the end of this order.

Also, defendants concede that they possess copies of certain Specialty formulas. (Declaration of Wayne D. Chandler, ¶¶ 27-28.) Many of these formulas are trade secrets. (Second Affidavit of Roger Weaver, ¶ 5.) The threat of use or disclosure of Specialty's trade secret formulas is great and defendants do not have any right to maintain possession of the formulas. Therefore, defendants will be ordered to submit to the Court each original and copy of any document or computer information storage device in their possession or control constituting or depicting chemical formulas belonging to or obtained from Specialty.

Defendants are preliminarily enjoined from:

(a) disclosing in any manner to any party or entity any chemical formulas, any trade secrets, or any other confidential or proprietary information obtained from plaintiff or learned while in plaintiff's employ;

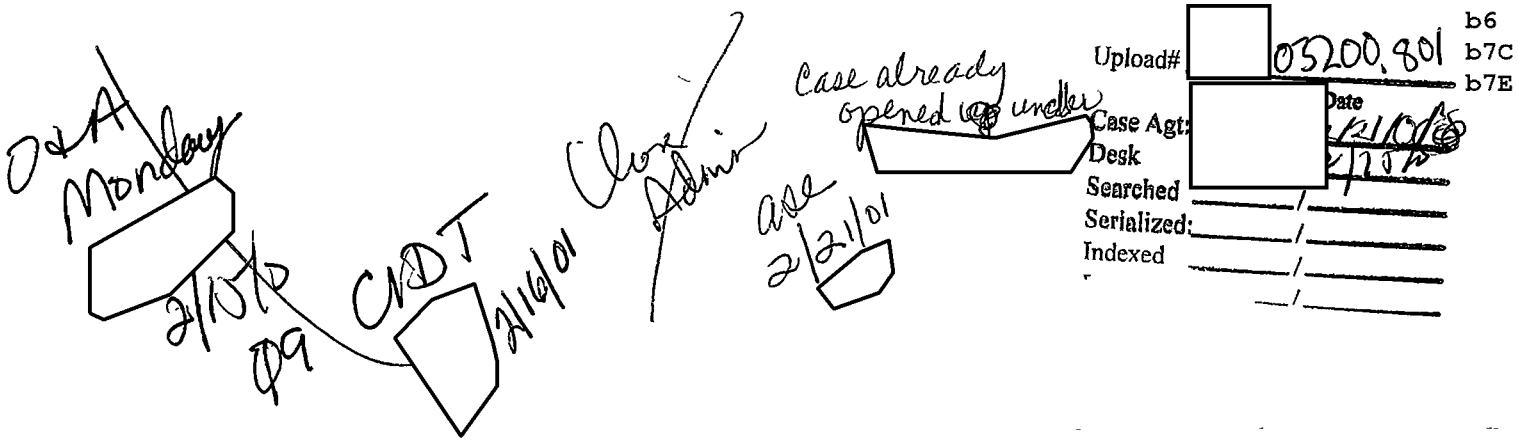
*7 (b) using in any manner, whether it be for purposes of sale, exchange, promotional offer, or any other use, any chemical formulas, any trade secrets, or any other confidential or proprietary information obtained from plaintiff or learned while in plaintiff's employ;

(c) using product names or code numbers that are identical to or closely resemble the product names or code numbers of plaintiff; and

(d) marketing, advertising, soliciting, selling, or otherwise distributing any product or formula by making the representation that said product or formula is "exactly the same as" any product or formula of plaintiff unless said product or formula is generally known in the metal finishing industry or generally available in the market place.

Defendants Wayne D. Chandler and Southern Industrial Chemicals are further ORDERED to surrender and deliver to the Court each and every original and/or copy of any document or computer information storage device in their possession or control constituting or depicting chemical formulas or trade secrets of or obtained from Specialty Chemicals & Services, Inc.

Copr © West 2001 No Claim to Orig. U.S. Govt. Works


Case already opened under
Upload#
05200.801
Case Agt:
Desk
Searched
Serialized:
Indexed
Date
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Company name EXIGENT INTERNATIONAL- SOFTWARE TECHNOLOGY INC. (STI)
Address/location 1225 Evans Road, Melbourne, Florida

Highest classification of information stored in system Unclassified

To: Counter-Terrorism From: WFO
Re: [redacted] Date: 01/30/2001 b7E

System Data:

Hardware/configuration Unknown
Operating System Unix, version unknown
Software: Unknown

Security Features:

Security Software Installed ☐ yes (identify _____) X no
Logon Warning Banner X yes no

INTRUSION INFORMATION

Access for intrusion: X Internet connection dial-up number ☐ LAN (insider)
If Internet Internet address [redacted] b7E
Network name _____

Method:

Technique(s) used in intrusion _____ (list provided)

Path of intrusion
addresses 1 _____ 2 _____ 3 _____
country 1 _____ 2 _____ 3 _____
facility 1 _____ 2 _____ 3. _____

Subject:

Age _____ Race _____
Sex _____ Education _____
Alias(s) _____ Motive _____
Group Affiliation _____
Employer _____
Known Accomplices _____
Equipment used _____
Hardware/configuration (CPU) _____
Operating System _____
Software _____

Impact:

Compromise of classified information ☐ yes x no
Estimated number of computers affected 1
Estimated dollar loss to date $500 million

To: Counter-Terrorism From: WFO
Re: [redacted] Date: 01/30/2001 b7E

Category of Crime:

Impairment:
- ☐ Malicious code inserted
- ☐ Denial of service
- ☐ Destruction of information/software
- ☐ Passwords obtained
- ☐ Modification of information/software
- ☐ Computer processing time obtained

Theft of Information:
- ☐ Classified information compromised
- ☐ Unclassified information compromised
- ☐ Telephone services obtained
- X Application software obtained
- ☐ Operating software obtained

Intrusion:
- x Unauthorized access
- ☐ Exceeding authorized access

REMARKS

On Dec. 24, 2000, a telnet connection originated from IP address [redacted] hostname [redacted] the b7E
University of Kaiserslautern, Germany, and connected to the NRL computer, IP address [redacted] hostname [redacted] The login used was OCS, a login used by multiple users. The OCS user then opened an FTP session to IP address [redacted] hostname [redacted] resulting in 117 files being copied from the NRL computer to the Carbonide computer.

The 117 files were the partial source code of a software program produced by Exigent International called the Interim Control Module (ICM). The ICM source code was available in the OCS users home directory. ICM is a program developed in the mid 1980's that is used on the Comet operating system to wirelessly control propulsion systems on satellites. ICM is proprietary by unclassified. Exigent estimated losses to projected revenue at $500 million. Carbonide is a major competitor of Exigent.

On Jan. 31, 2000, NCIS investigators in Germany learned b7D b7E
that [redacted] have been contacted [redacted]

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[redacted] are the Naval Criminal Investigative Services (NCIS) Agents assigned to investigate the case. [redacted] learned that Exigent has filed a civil lawsuit against the University of Kaiserslautern and Carbonide. [redacted] also learned from [redacted] (Phonetic), a NASA investigator, that Exigent has recently contracted with a computer forensic investigation firm called Berotech (phonetic).

[redacted] are attempting to visit Exigent's headquarters in Melbourne, FL to conduct interview sometime after 02/05/01.

♦♦

02/16/01 List Summary Response UNI050MK
14:46:10
Type X, x, or / to view Full Response, then press Enter.

. Name: NAVAL RESEARCH LAB
M/R : M Case ID: Serial:
Race: X Sex: X DOB/Event: 12/24/2000E ID Info:
Misc: Entry Date: 02/13/2001 Class Level: SN

. Name: NAVAL RESEARCH LAB
M/R : R Case ID: 46A-WF-174355-E Serial: 59;
Race: X Sex: X DOB/Event: ID Info:
Misc: Entry Date: 05/11/1992 Class Level: SN

. Name: NAVAL RESEARCH LAB
M/R : R Case ID: WF 58A-2151-AC Serial: 4;
Race: X Sex: X DOB/Event: ID Info:
Misc: EMPLOYEE Entry Date: 08/24/1988 Class Level: SN

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Command . . > ..... +
F1=Help F3=Exit F4=Prompt F8=Fwd F12=Cancel

FD-340a (Rev. 11-12-89)

(Title) UNSUB, NAVAL RESEARCH LAB

(File No)

b7E

Item	Date Filed	To be returned Yes	To be returned No		Disposition
1	2/1/01		✓	NOTE FROM TELEPHONE CONVERSATIONS WITH NCIS.	

FD-340 (Rev 8-7-97)

b7E

Universal Case File Number [redacted]

Field Office Acquiring Evidence WFO

Serial # of Originating Document 1

Date Received 2/1/00

From _____
(Name of Contributor)

_____
(Address of Contributor)

_____
(City and State)

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By [redacted]
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No
Receipt Given ☐ Yes ☐ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☐ No

Title: UnSub
Naval Research Lab
Exigent International - STI

Reference: _____
(Communication Enclosing Material)

Description: ☐ Original notes re interview of

Note from telephone conversations with NCIS.

(Rev 08-28-2000)

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY **Date:** 02/15/2001

To: ✓Washington Field **Attn:** [redacted]/NVRA/NIPC
SA [redacted]

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From: Tampa
Squad 6 / BRA
Contact: SA [redacted] (321) 752-6021

Approved By: [redacted]

Drafted By: [redacted]

Case ID #: [redacted]

Title: UNSUB(S);
NAVAL RESEARCH LABORATORY;
EXIGENT SOFTWARE TECHNOLOGY
INTERNATIONAL - VICTIM;
[redacted]

Synopsis: Provide FBI presence at briefing and discussions and thereafter interview at Exigent Software Technology International (ESTI).

Reference: [redacted]

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Details: On 2/15/01, SA [redacted] was requested to assist Naval Criminal Investigative Service (NCIS) in a briefing, discussion and interview at ESTI located at 1830 Penn Street, Melbourne, Florida, 32901, (888) 952-9468.

The following individuals were present at the briefing and discussion:

[redacted]

- [redacted] ESTI
- [redacted] ESTI
- [redacted] ESTI
- [redacted] ESTI
- [redacted] for ESTI
- Veritect Corporation
  10790 Parkridge Boulevard
  Suite 300
  Reston, VA 20191
  (703) 788-7829

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SA [redacted] - NCIS
SA [redacted] - NCIS

To: Washington Field From: Tampa
Re: [redacted] 02/15/2001

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SA [redacted] - FBI

On 2/15/01, [redacted] ESTI, SSAN: [redacted] DOB: [redacted] POB: [redacted] was interviewed by SA's [redacted] in the presence of SA [redacted] NCIS will report on this matter.

Tampa considers this lead covered and should be marked covered.

LEAD(s):

Set Lead 1:

WASHINGTON FIELD

AT [redacted] b7E

Read and clear.

♦♦

(Rev 08-28-2000)

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY **Date:** 02/13/2001

To: Tampa **Attn:** SSA

From: Washington Field
/NVRA/NIPC
Contact: SA (703) 762-3023

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Approved By:

Drafted By:

Case ID #:

Title: UNSUB(S);
NAVAL RESEARCH LAB;
EXIGENT SOFTWARE TECHNOLOGY INTERNATIONAL - VICTIM;

Synopsis: Provide background information concerning the recent intrusion at captioned victim's facility and request Tampa assist the Naval Criminal Investigative Service (NCIS) with additional interviews which are scheduled at captioned victim's facility in Melbourne,FL.

Reference:

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Details: On Dec. 24, 2000, a telnet connection originated from the University of Kaiserslautern, Germany, specifically IP address with a hostname That telnet session connected to a computer system located at the Naval Research Laboratory, with an IP address of That systems hostname was identified as The login utilized was OCS, which is a valid login name and password. The OCS user then opened an FTP session to IP address hostname During that ftp session, 117 files were transferred from the NRL computer system to the Carbonide computer.

The 117 files were the partial source code of a software program produced by Exigent International called the Interim Control Module (ICM). The ICM source code was available in the OCS users home directory. ICM is a program developed in the mid 1980's that is used on the Comet operating system to wirelessly control propulsion systems on satellites. ICM is proprietary by unclassified. Exigent estimated losses to projected revenue at $500 million. Carbonide is a major competitor of Exigent.

Copy faxed to RA (Handling lead 2/14/01

Upload# lead [redacted] 2/14/01
Initials / Date

Case Agt [redacted] / 2/14/01
Desk / 2/18/01
Searched ____/____
Serialized: ____/____
Indexed ____/____
Filed ____/____

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[redacted]

On Jan. 31, 2000, NCIS investigators in Germany learned that b7D b7E
[redacted]
contacted [redacted]

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LEAD(s):

Set Lead 1:

TAMPA

AT MELBOURNE, FL.

At 9:00am, Thursday, 2/15/01, meet SA [redacted] NCIS, at the Exigent office, 1830 Penn Street, Melbourne, FL., to assist with three interviews. b6 b7C

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FD-801 (Rev 7-15-97)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE Date: 02/01/2001

To: Counter-Terrorism **Attn:** Computer Investigations Unit, Room 11887, National Infrastructure Protection Center (NIPC)

From: WFO

Approved By:

Drafted By:

Case ID #:

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Title: Subject: UNSUB(S)
Victim: NAVAL RESEARCH LAB; EXIGENT INTERNATIONAL - STI
Type:
Date: 01-30-01

SUBMISSION: X Initial ☐ Supplemental ☐ Closed

CASE OPENED: _____

CASE CLOSED: _____

☐ No action due to state/local prosecution
(Name/Number:_____)
☐ USA declination
☐ Referred to Another Federal Agency
(Name/Number:_____)
☐ Placed in unaddressed work
☐ Closed administratively
☐ Conviction

O+A
SA
2/13/01
2/13/01

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COORDINATION: FBI Field Office _____
Government Agency _____
Private Corporation _____

VICTIM

Company name/Government agency: Naval Research Laboratory
Address/location: 4555 Overlook Avenue, SW, Washington, DC 20375
Purpose of System: File Server
Highest classification of information stored in system: Unclassified

Company name: EXIGENT INTERNATIONAL- SOFTWARE TECHNOLOGY INC. (STI)
Address/location: 1225 Evans Road, Melbourne, Florida

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Highest classification of information stored in system: Unclassified

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To: Counter-Terrorism From: WFO
Re: [redacted] Date: 01/30/2001 b7E

Category of Crime:

Impairment:
- ☐ Malicious code inserted
- ☐ Denial of service
- ☐ Destruction of information/software
- ☐ Passwords obtained
- ☐ Modification of information/software
- ☐ Computer processing time obtained

Theft of Information:
- ☐ Classified information compromised
- ☐ Unclassified information compromised
- ☐ Telephone services obtained
- X Application software obtained
- ☐ Operating software obtained

Intrusion:
- x Unauthorized access
- ☐ Exceeding authorized access

REMARKS

On Dec. 24, 2000, a telnet connection originated from IP address [redacted] hostname [redacted] the University of Kaiserslautern, Germany, and connected to the NRL computer, IP address [redacted] hostname [redacted] b7E The login used was OCS, a login used by multiple users. The OCS user then opened an FTP session to IP address [redacted] hostname [redacted] resulting in 117 files being copied from the NRL computer to the Carbonide computer.

The 117 files were the partial source code of a software program produced by Exigent International called the Interim Control Module (ICM). The ICM source code was available in the OCS users home directory. ICM is a program developed in the mid 1980's that is used on the Comet operating system to wirelessly control propulsion systems on satellites. ICM is proprietary by unclassified. Exigent estimated losses to projected revenue at $500 million. Carbonide is a major competitor of Exigent.

On Jan. 31, 2000, NCIS investigators in Germany learned b7D b7E that [redacted] have been contacted [redacted] b6 b7C [redacted] are the Naval Criminal Investigative Services (NCIS) Agents

assigned to investigate the case. [redacted] learned that Exigent has filed a civil lawsuit against the University of Kaiserslautern and Carbonide. [redacted] also learned from [redacted] (Phonetic), a NASA investigator, that Exigent has recently contracted with a computer forensic investigation firm called Berotech (phonetic). b6 b7C

[redacted] are attempting to visit Exigent's headquarters in Melbourne, FL to conduct interview sometime after 02/05/01.

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 03/06/01

Source, who is not in a position to testify, provided the following information via e-mail:

[redacted]

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b7E

[redacted]

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b7D
b7E

Investigation on 03/05/01 at [redacted]

File # [redacted] Date dictated

by SA [redacted]

This document contains neither recommendations nor conclusions of the FBI It is the property of the FBI and is loaned to your agency, it and its contents are not to be distributed outside your agency

(Rev 08-28-2000)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE **Date:** 03/06/2001

To: Washington Field **Attn:** Computer Intrusion Squad
SA [redacted]

From: San Francisco
Squad 14B/HRA
Contact: SA [redacted] (510) 583-5243

Approved By: [redacted]

Drafted By: [redacted]

Case ID #: [redacted]

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Title: UNSUB(S);
NAVAL RESEARCH LAB; EXIGENT INTERNATIONAL -STI;
[redacted]

Synopsis: To provide FD-302 containing source information regarding captioned investigation.

Enclosures: 2 copies FD-302.

Details: On 03/05/01, SA [redacted] received e-mail from source containing information relative to identifying subject of captioned case.

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LEAD (s):

Set Lead 1: (Adm)

WASHINGTON FIELD

AT NORTHERN VIRGINIA

Read and clear.

♦♦

(Rev 08-28-2000)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE **Date:** 03/12/2001

To: Washington Field

From: Washington Field
[redacted]NVRA/NIPC
Contact: SA [redacted] x3023

Approved By: [redacted]

Drafted By: [redacted]

Case ID #: [redacted]

Title: UNSUB (S);
NAVAL RESEARCH LABORATORY;
EXIGENT SOFTWARE TECHNOLOGY
INTERNATIONAL - VICTIM
[redacted]

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Synopsis: Report results of investigation.

Details: On March 7, 2001, writer met with SA [redacted] Naval Criminal Investigative Service(NCIS). [redacted] provided the following information:

On December 24, 2000, an unknown subject(s) gained unauthorized access to an unclassified computer system at the Naval Research Labatory(NRL), NRL Computer 2, IP address [redacted] Access was gained by using a legitimate username and password. [redacted] A review of the NRL system logs, revealed that the perpetrator went directly to the directory which contained the file named O/S COMET. [redacted] the O/S COMET file. Although the victim computer was housed a the NRL, the actual victim system was the responsibility of the government contractor, EXIGENT SOFTWARE TECHNOLOGY INTERNATIONAL.

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The UNSUB connected to the NRL via a telnet session that originated from the University of Kaiserlautern, IP address [redacted] The UNSUB immediately began to ftp the O/S COMET file to IP address [redacted] That IP address resolved to the Carbonite Company, Sweden.

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Upload# [redacted] 3/12/01

Case Ag[redacted] Date 3/12/01
Desk 4/6/01
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Serialize 4/6/01
Indexed ____/____
Filed ____/____

[redacted]

The O/S COMET file is an old version of source code for a software program that allows ground units to communicate with and control the movement of satellites. Additionally, in order for this software to be useful, [redacted]

Interviews by NCIS, of Exigent personnel, has revealed conflicting information. An interview with the programmer who wrote the source code for the O/S COMET program reported that the version taken, was worthless. Especially, since there are newer versions available and from numerous commercial sources. However, the CEO for the company has claimed that the stolen program is worth millions, if not billions. It should be noted, in January 2001, Exigent filed a civil suit in federal court seeking damages from the University of Kaiserlautern, and the Carbonite Company, Sweden. The CEO informed [redacted] that he was going after Carbonite because they are a subsidary of Ericcson, Sweden, and that they have "deep pockets." Purportedly, Exigent has been experiencing financial problems. b6 b7C

In March 2000, Exigent had a contract with Miru of Korea, to provide Miru with binary copies of the OS/COMET software, the same version as stolen from the NRL on December 24, 2000. Subsequent to the sale to MIRU, the US State Department claimed that the OS/COMET was a protected program that could not be supported nor exported by EXIGENT to Korea. Therefore, EXIGENT had to suspend providing support to MIRU. EXIGENT stopped providing technical support to MIRU in November 2000. MIRU was having problems with the application program interface and the command subsystem. Areas that could be corrected with by the stolen OS/COMET program.

[redacted] b7D b7E

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[redacted]

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[redacted] The following investigation was conducted by SA [redacted] at Washington, D.C. on March 7,2001:

SA [redacted] Naval Criminal Investigative Service, Washington Field Office, provided copies of motions that have been filed with the United States District Court, Middle District of Florida. The plaintiff for these motions is Exigent Software Technology, Inc. and the defendants are Carbonide AB, a Swedish limited company and the University of Kaiserslautern, a German University.

The motions which are attached with this insert are identified as the following:

1. Plaintiffs' emergency motion for temporary restraining order and preliminary injunction and incorporated memorandum of law;

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2. Verified complaint for damages and injunctive relief and demand for jury trial;

3. Certificate of interested persons and corporate disclosure statement.

[redacted]

Uploaded [redacted] / 3/8/01 b6 b7C

Case Agent [redacted] / Date 3/8/01

Desk / 4/4/01

Searched [redacted] /

Serialized [redacted] / 4/11/01

Indexed /

Filed /

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

EXIGENT SOFTWARE TECHNOLOGY, INC , f/k/a SOFTWARE TECHNOLOGY, INC., a Florida corporation; and EXIGENT INTERNATIONAL, INC, a Delaware corporation

Plaintiffs,

vs.

CARBONIDE AB, a Swedish limited company; UNIVERSITÄT KAISERSLAUTERN, a German public university; and JOHN DOES

Defendants.
_____/

CASE NO._____

PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND INCORPORATED MEMORANDUM OF LAW

Preliminary Statement

Plaintiffs, Exigent Software Technology, Inc. f/k/a Software Technology, Inc., a Florida corporation ("ESTI"), and Exigent International, Inc., a Delaware corporation ("Exigent"), (collectively "plaintiffs"), by and through their undersigned counsel, respectfully move this Court on an emergency basis for an order pursuant to Fed. R. Civ. P. 65(a) and 65 (b), preliminarily restraining and enjoining defendants, Carbonide AB ("Carbonide"), Universitat Kaiserslautern, a German public university ("Kaiserslautern"), and unknown co-conspirator(s) (hereinafter collectively referred to as "John Does") from transferring or disseminating to other persons or entities, and/or

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utilizing, in any way or manner, plaintiffs' software source code and other proprietary information and trade secrets stolen from plaintiffs through one of their customers Plaintiffs also submit this Memorandum of Law in support of their Motion. Plaintiffs rely upon the Verified Complaint in support of this Motion. Accompanying this Motion and Memorandum is a proposed Order granting plaintiffs the relief sought.

FACTS

1. Plaintiff, ESTI, is and was at all times material hereto a Florida corporation and a wholly owned subsidiary of Exigent. ESTI has been doing business in Florida since 1978 as a builder and supplier of commercial off-the-shelf ("COTS") tracking and control software for satellite networks, incorporating a graphical user interface, date acquisition, commanding and telemetry processing functions which can be custom-tailored for specific satellite applications for both commercial and governmental clients.

2. Plaintiff, Exigent, is and was at all times material hereto a Delaware corporation, is the parent corporation of ESTI and owns the software developed and supplied by ESTI.

3. Upon information and belief, Carbonide is and was at all times material hereto a Swedish limited company formed in 1999 with its principal place of business in Stockholm, Sweden and a competitor of plaintiffs. Carbonide promotes itself as a combined product development and technical consulting company which has developed a java-based platform for internet, intranet and wireless internet service providers ("ISPS") and portal operators based on standardized and re-usable software components.

4. Upon information and belief, defendant, Universität Kaiserslautern ("Kaiserslautern"), is and was at all times material hereto, a German public university located in Kaiserslautern, Germany.

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5 Defendants, John Does, are unknown individuals and/or entities who are and were at all times material hereto knowingly acting in concert with Carbonide and/or Kaiserslautern to misappropriate plaintiffs' trade secrets and intellectual property in the form of computer software and/or source code and/or who may be in possession of same.

6. In or about April, 1998, ESTI and an agency of the United States Government entered into a licensing agreement for plaintiffs' ground-control satellite communication software known as OS/Comet and Calypso Pro Software ("software"). The agreement provided for installation of the software into a protected, restricted-access computer system in a government naval research laboratory located in Washington, D.C. ("computer system") and for the provision of engineering support for a total cost not to exceed $61,538,419 00. ESTI entered into a subsequent agreement to install updated versions of the Software on or about December 8, 2000.

7. In addition to the object code contained in plaintiffs' copyrighted software, ESTI also installed its original source code from which the software was compiled ("source code") into the computer system. The source code, which is highly confidential in and of itself, also contains confidential information relating to the identities of software engineers and software architecture.

8. The software currently supports certain classified government controlled space and avionics systems and all of the employees of plaintiffs connected to the project have obtained and maintained a clearance permitting access to information classified at the SECRET level or higher.

9. In addition to the United States Government, plaintiffs have licensed the software to other non-governmental commercial entities which utilize ground control systems for communicating with satellites and/or space craft.

10. Plaintiffs expend a great amount of time, effort and resources maintaining the confidentiality of the software and said source code is unique in the industry, of value to plaintiffs, protected by plaintiffs as trade secrets and, accordingly, not susceptible to general knowledge by the

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public Furthermore, plaintiffs require that each of their non-government customers execute a confidentiality agreement in connection with software licensure. However, none of plaintiffs' non-governmental clients have been provided with a copy of plaintiffs' source code.

11. In addition to the foregoing, plaintiffs have placed the following copyright notice in each of their source code files clearly identifying that they are comprised of valuable trade secrets belonging to plaintiffs:

> © Copyright 1993-1998, Exigent International Inc , ALL RIGHTS RESERVED
>
> The OS/COMET™ software and information contained herein is proprietary to, and comprises valuable trade secrets of, STI, which intends to preserve as trade secrets such software and information. This software is furnished pursuant to a written license agreement and may be used, copied, transmitted, transferred, and stored only in accordance with the terms of such license and with the inclusion of the above copyright notice. This software and information or any other copies thereof may not be disclosed, transferred, or otherwise made available to any other person.
>
> RESTRICTED RIGHTS NOTICE
>
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12. On or about December 27, 2000, plaintiffs received notification that the government computer containing plaintiffs' software and source code had been accessed by unauthorized and unknown individuals and that certain source code files had been downloaded from the system.

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Pursuant to the licensing agreement, ESTI was requested to perform a "lock-up" procedure to re-establish the integrity of the system.

13 While performing the security procedures, ESTI reviewed a trace of unusual network activity and examined computer logs and confirmed that unauthorized access had occurred on December 24, 2000, at 9:30 p.m. E.D.T. The trace revealed that an unauthorized user located at Kaiserslautern's facility established a telnet session from host "sulfur.chemie.uni-kl.de," logged into the OS/Comet account and executed a file transfer procedure to transfer multiple files containing plaintiffs' source code to the Swedish host "littlechief.carbonide.com" also registered as ftp.freebox.com. The Swedish host is owned and/or controlled by Carbonide.

14. But for their unauthorized and unlawful access into the protected government computer system the defendants would not have had access to and/or knowledge of the contents of plaintiffs' software, the source code files and the contents thereof.

15. Upon information and belief, defendants are currently in possession of the plaintiffs' source code files containing confidential information and trade secrets of plaintiffs and will inevitably disclose and/or utilize same.

16. Plaintiffs have been, are being and will continue to be harmed by defendants' wrongful acts including, but not limited to, the following:

a. wrongful disclosure of confidential information and trade secrets;

b. loss of goodwill and reputation;

c. loss of employee morale;

d. unfair competition;

e. potential chilling of orders and sales of existing technology;

f. actual and potential loss of customers;

g. misappropriation of property;

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h. wrongful disclosure of customers' confidential and proprietary information.

17. The source code files which were misappropriated could potentially allow Carbonide, Kaiserslautern and/or John Does to develop software which would allow them to tamper with and affect satellites controlled by the U.S. government, including satellites controlling spacecraft Defendants' knowledge and/or use of plaintiffs' software and/or source code substantially impairs the integrity and confidentiality of the OS/Comet system and software and threatens the public health and safety.

18. Plaintiffs and their customers have been damaged by the misappropriation of the software and source code files containing confidential information and trade secrets, and are without an adequate remedy at law. Plaintiffs are likely to succeed on the merits in this case and the public interest would be best served if a temporary restraining order and preliminary injunction were issued in this case.

19. Immediate and irreparable injury to plaintiffs and its customers has occurred and will continue unless a temporary restraining order is issued immediately. Based on the circumstances under which the confidential information and trade secrets were misappropriated, it is reasonable to assume that if the defendants were given notice of plaintiffs' request for a temporary restraining order, the trade secrets and valuable evidence regarding its misappropriation may be transferred, deleted or otherwise destroyed.

20. Plaintiffs have learned through associate counsel in Germany that the computer logs maintained by German public institutions may be overwritten in as little as one (1) to four (4) weeks from the time of the log entries, rendering the overwritten data irretrievable by plaintiffs. In the event the logs have been overwritten before an appropriate court order can be issued, plaintiffs will be unable to retrieve critical information contained in the logs pertaining to the unauthorized access

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and any additional copying and/or dissemination to third parties which may have occurred and which is currently unknown to plaintiffs.

21. For the reasons set forth above, the threat of irreperable injury to the plaintiffs is so imminent that notice and a hearing on this motion is impractical if not impossible.

22. Because the unauthorized access occurred almost four (4) weeks ago, it is critical that this court consider this motion on an emergency basis.

MEMORANDUM

Notice of Plaintiffs' Request for TRO Should Not Be Required

Plaintiffs should not be required to provide notice to defendants of its request for a temporary restraining order. As the court recognized in the trademark case of In re. Vuitton Et Fils, S.A., 606 F.2d 1 (2d Cir. 1979), the failure to enjoin the transfer of merchandise (in this case, plaintiffs' trade secrets), would result in great damage to plaintiffs. While ex parte temporary restraining orders are not generally favored, the U.S. Supreme Court has recognized that they are sometimes necessary. In Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, 415 U.S. 423, 438, 94 S. Ct. 1113 (1974), the Court provided guidance on this issue:

> Ex parte temporary restraining orders are no doubt necessary in certain circumstances, ... but under federal law they should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing and no longer. [Citations omitted]

In this case, an ex parte restraining order is the only way to preserve the status quo until the court can consider issuing a preliminary injunction. Without this relief, plaintiffs' confidential information and trade secrets may be utilized and/or sold and critical evidence may be destroyed.

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Basis for a TRO and Preliminary Injunction

A temporary restraining order should be granted where a movant demonstrates that (a) there is a substantial likelihood that it will succeed on the merits; (b) irreparable injury will result absent the relief requested; (c) the threatened injury to the movant outweighs whatever damages the injunction may cause the opposing party; and (d) that an injunction will serve the public interest. Glen Raven Mills v. Ramada International, 852 F. Supp. 1544 (M.D. Fla. 1994); In Nation Magazine v. Department of State, 805 F. Supp. 68 (D.D.C. 1992). The criteria for a preliminary injunction are virtually identical. Your Net Dating, LLC v. Mitchell, 88 F. Supp.2d 870, 871 (N.D. Ill. 2000). A preliminary injunction is an appropriate remedy in a case where there is unauthorized access of a computer. Id. The remedy is especially appropriate for trade secret protection where the courts have recognized that secrecy is critical to the legal protection of a trade secret, and it can be lost by the inadvertent or intentional disclosure by a third party. Lamb v. Quality Inspection Services, Inc., 398 So.2d 643 (La. Ct. App. 1981). See also FMC Corp. v. Vavco International, 677 F.2d 500 (5th Cir. 1982). Based on the facts and law as set forth herein, plaintiffs have clearly met their burden of demonstrating that a temporary restraining order and preliminary injunction should be issued.

Plaintiffs Have Shown A Likelihood Of Success On The Merits Of Their Claim

Plaintiffs' request for a temporary restraining order and preliminary injunction are based on the Computer Fraud and Abuse Act, the Florida Uniform Trade Secrets Act and common law unfair competition.

Computer Fraud and Abuse Act ("CFAA")

The CFAA has been violated when someone "intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains ... information from any department or agency of the United States." 18 U.S.C. § 1030(a)(2)(B). The CFAA further provides that a

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person may not "intentionally, without authorization to access any non-public computer of a department or agency of the United States, access such a computer of that department or agency that is exclusively for the use of the government of the United States." 18 U.S.C. § 1030(a)(3). Finally, the CFAA also provides that it is a violation if a person "knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value...," 18 U.S.C. § 1030(a)(4). The actions of Carbonide, Kaiserslautern and John Does fall within the statutory violations, and plaintiffs are entitled to the remedies provided by the CFAA - one of which is injunctive relief.

The CFAA provides that "any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and **injunctive relief** or other equitable relief." (emphasis added). Injunctive relief is particularly appropriate where computer information can be easily transferred, deleted, hidden or destroyed, and such relief has been commonly granted for violations of the CFAA. See Your Net Dating, Inc. vs. Mitchell, 88 F. Supp. 2d 870 (N.D. Ill. 2000). In fact, courts have found injunctive relief appropriate where a statute provides for it and there is a reasonable likelihood of future violations absent such relief. See Universal City Studios v. Reimerdes, 111 F. Supp.2d 294, 343 (S.D.N.Y. 2000).

Florida's Uniform Trade Secrets Act

Injunctive relief is also particularly appropriate for violations of Florida's Uniform Trade Secrets Act ("FUTSA"). The FUTSA specifically provides injunctive relief for "actual or threatened misappropriation" of a trade secret. Fla. Stat. § 688.003(1). A trade secret is defined in Fla. Stat. § 688.002(4) as:

> information, including a formula, pattern, compilation, program, device, method, technique or process that

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(a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The source code files and software owned by plaintiffs fall within the definition set forth in FUTSA and constitute trade secrets. Defendants have willfully and maliciously misappropriated and acquired plaintiffs' trade secrets by illegal and improper means. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of the misappropriation of their trade secrets. Plaintiffs should be granted the injunctive relief specifically provided for in the Fla. Stat. § 688.002(4).

Unfair Competition

Plaintiffs' source code files and software are unique in the industry and have given them a competitive edge in the marketplace. Plaintiffs have invested substantial time, money and effort in developing their confidential information and trade secrets, and in maintaining the confidentiality of same. Through their deliberate, malicious and unlawful actions, defendants have enabled themselves to unfairly compete with plaintiffs. Injunctive relief is appropriate in such a case where there is no remedy other than injunctive relief that can serve to stop the unfair competitive advantage defendants have gained through their unlawful actions. Universal City Studios, Inc. v. Reimerdes, 111 F. Supp.2d 294, 343 (S.D.N.Y. 2000); Northern Light Technology, Inc. v. Northern Lights Club, 97 F. Supp.2d 96 (D. Mass. 2000).

There is a substantial likelihood that plaintiffs will succeed on the merits of their claims based on the CFAA, the FUTSA and common law unfair competition, and this motion for a temporary restraining order and preliminary injunction should be granted.

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Plaintiffs Will Suffer Irreparable Harm If An Injunction Is Not issued

To be entitled to a temporary restraining order, plaintiffs must demonstrate that if the confidential information and trade secrets were utilized, transferred or disseminated, irreparable harm would result. Based on the facts set forth in the Verified Complaint, it is clear that the software and source code files containing confidential information and trade secrets, which are utilized to control governmental and other satellites (including those controlling spacecraft), are valuable to plaintiffs both monetarily and as to their reputation in the market. If a temporary restraining order is not issued and the information is utilized, transferred, disseminated or modified to be incorporated into a competitor's product, there will be no way to prevent the potential and ongoing harm to plaintiffs, its customers and the public.

A Balance Of The Hardships Weighs Decidedly In Plaintiffs' Favor

The issuance of an injunction will have no effect on defendants' existing business, except perhaps to curtail their plans to profit from what was stolen from plaintiffs. As to plaintiffs, the potential damage to them financially and to their reputation cannot be measured. As the court pointed out in another case where trade secrets were stolen,

> [W]e must weight the millions of dollars expended to invent, design and develop its trade secrets, the deliberate steps taken to insure that its trade secrets remain confidential and the instantaneous loss in value Speciality's trade secrets would incur if the defendants were not enjoined from use or dissemination. Conversely, defendants have already profited from their conduct . . . The preliminary injunction would serve only to enjoin defendants from further violation of the law. Specialty Chemicals & Services, Inc. v. Chandler, 1988 WL 618583 (N.D. Ga. 1988). (A copy of this unpublished opinion is attached hereto as Exhibit "A.")

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An Injunction Is Necessary To Protect The Public

The potential harm to plaintiffs' customers and the general public is virtually immeasurable and could be devastating if an injunction were not issued. Not only is there the very real potential that plaintiffs' customers' confidential and proprietary information could be disclosed, but the safety of the general public is at risk where an unauthorized party can potentially use the software to develop its own system to control satellites and space craft. The public will be best served if a restraining order and a preliminary injunction are issued.

Posting of a Bond

Rule 65 of the Federal Rules of Civil Procedure requires the posting of a bond before a temporary restraining order or preliminary injunction issues. The amount of the bond should be based on the foreseeable damages which would be sustained by the defendants if it was ultimately decided that the induction was wrongfully issued. Plaintiffs assert that the defendants will not suffer any significant harm if a temporary restraining order or preliminary injunction is issued. Certainly prohibiting the defendants from utilizing or disseminating the plaintiffs' trade secrets will not result in any hardship. Likewise, returning what was wrongfully and unlawfully taken from the plaintiffs should not cause damage to the defendants whose possession of the software and source code files violates the law and provides them with an unfair, competitive advantage. Providing logs and information to assist plaintiffs in tracing the misappropriated information should be a ministerial task and not unduly burdensome. Finally, providing plaintiffs with access to the defendants' computers should not cause a major disruption to their business. In summary, there is little likelihood of damage to the defendants for having to stop its illegal use of plaintiffs' trade secrets. In Specialty Chemicals & Services, Inc. v. Chandler, the Court came to the same conclusion in a case where the plaintiff's proprietary information was in jeopardy and the court in granting a preliminary injunction did not require a bond. 1988 WL 618583 (N.D. Ga. 1988). (A

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copy of this case is attached hereto as Exhibit "A.") Accordingly, plaintiffs respectfully submit that if a bond is required, a $50,000 bond would be adequate to protect the defendants in this matter. See Affiliated Paper Companies, Inc. v. Hughes, 667 F.Supp. 1436, 1452 (N.D. Ala. 1987).

CONCLUSION

For all of the foregoing reasons, plaintiffs' Motion for a Temporary Restraining Order and a Preliminary Injunction should be granted. A proposed Order for the Court's consideration accompanies this motion.

WHEREFORE, plaintiffs request that this Court enter a temporary restraining order and a preliminary and permanent injunction as follows:

A. Ordering that defendants immediately return to plaintiffs any and all copies of plaintiffs' source code files, source code and/or proprietary software in their possession, custody and/or control;

B. Ordering that defendants turn over to plaintiffs any and all other computer software and/or code in which plaintiffs' source code has been incorporated into, embedded, utilized or which otherwise originated from or been derived from plaintiffs' source code as well as any and all copies thereof regardless of form of media;

C. Ordering that plaintiffs and/or an agent of the plaintiffs be permitted to inspect all computers owned, operated and/or controlled by defendants and remove and/or delete all unauthorized copies of plaintiffs' source code, software and/or other trade secrets contained therein;

D. Ordering that defendants disclose the names, identities, addresses and any and all other information relating to the identities of all persons and/or entities which had accounts with, logged in and/or utilized defendants' computer systems from December 23, 2000, to the present;

E. Ordering that defendants immediately turn over to plaintiffs any and all computer logs from December 23, 2000, to the present;

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F. Ordering that defendants disclose the names, addresses and any and all other information relating to the identification of all persons and/or entities to whom plaintiffs' source code, software, trade secrets and other intellectual property were disclosed, disseminated, published and/or transferred regardless of method and media;

G. Enjoining defendants from disclosing and/or utilizing source code, trade secrets and confidential information belonging to plaintiffs including, but not limited to, its OS/Comet and Calypso Pro software, original source code or information contained therein and any and all variations, derivations and/or copies thereof;

H. Enjoining defendants from doing business with and/or for plaintiffs' current and former customers;

I. Awarding plaintiffs reasonable attorneys' fees and costs incurred by them in the prosecution of this action; and

J. Granting such other and further relief as this Court deems just and equitable.

Respectfully submitted,

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[redacted] Esquire
Florida Bar No [redacted]
[redacted] Esquire
Florida Bar. No. [redacted]

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Emergency Motion for Temporary Restraining Order and Preliminary Injunction and Incorporated Memorandum of Law will be served with the Verified Complaint filed in this action.

[redacted] Esquire
Florida Bar No. [redacted]

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United States District Court, N.D. Georgia, Atlanta Division.

SPECIALTY CHEMICALS & SERVICES, INC., Plaintiff,
v.
Wayne D. CHANDLER and Southern Industrial Chemicals, Inc., Defendants

No. CIV.A.1:87CV-2338MHS.

Sept. 29, 1988.

Michael C. Towers, Robert P. Foster, Fisher & Phillips, James Dean Johnson, Jones & Askew, Atlanta, for Novamax Technologies (U.S.) Inc., plaintiffs.

Michael C. Towers, Robert P. Foster, Fisher & Phillips, Lawrence K. Nodine, Sumner Curtis Rosenberg, Needle & Rosenberg, Atlanta, for Wayne D. Chandler, Southern Industrial Chemicals, Inc., defendants.

ORDER

SHOOB, J.

*1 On November 5, 1987, after notice and hearing where all parties were represented by counsel, this Court issued a temporary restraining order ("T.R.O.") prohibiting defendants from engaging in certain described activity until further order of the Court. On August 12, 1988, a preliminary injunction hearing was held where all parties were again represented.

After consideration of oral argument, briefs and affidavits submitted by both parties and the prior record in the case, the Court hereby enjoins defendants from engaging in the conduct described in this order.

FINDINGS OF FACT

Plaintiff Specialty Chemicals & Services, Inc. ("Specialty") has been engaged in the sale and service of chemicals to the metal finishing industry for over seventeen years. Many of Specialty's product names and code numbers are well known in the industry. Many of these products are the result of significant expenditures of time and money by Specialty; the formulas and compounds are proprietary information. The products are not widely available and the formulas not generally known.

Defendant Wayne D. Chandler ("Chandler") is the founder and president of co- defendant Southern Industrial Chemicals, Inc. ("Southern"). Chandler has occupied that position since Southern's inception approximately two years ago. Prior to forming Southern, Chandler was employed by Specialty since 1983, working with Specialty's paint pre-treatment line of products. While employed at Specialty Chandler had access to confidential chemical formulas and other trade secrets developed by and belonging to Specialty. These formulas were kept secure in locked file cabinets and were accessed only on a need-to-know basis by employees, like Chandler, who occupied a position of trust with Specialty.

Specialty learned that Chandler was planning to open a competing company and that he was soliciting Specialty's employees and customers while still employed by Specialty. As a result, Specialty terminated Chandler's employment on July 17, 1986. On that day, Specialty took back Chandler's company car and found under the floor mats certain secret chemical formulas belonging to Specialty which Chandler had no valid business reason for possessing.

After termination of his employment at Specialty, Chandler established Southern--a firm engaged in business identical to Specialty's. Chandler and Southern primarily sell aluminum anodizing chemicals. All of the products sold by Southern are also sold by Specialty.

As part of Southern's marketing strategy Chandler used product numbers identical to the widely known and recognized numbers of Specialty and represented to customers and potential customers that Southern's products were "exactly the same as" those of Specialty. Chandler and Southern used a number of proprietary chemical formulas belonging to Specialty to make their products. (Declaration of Wayne D. Chandler, ¶ 37; Deposition of Wayne D. Chandler at 253-55.) Defendants' marketing practices have caused instances of customer

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confusion between defendants' products and Specialty's products. In one case defendant Chandler, on behalf of Southern, called upon a customer of Specialty's--Lanson Industries. Chandler so closely linked Southern's products with Specialty in his sales approach that Lanson erroneously sent the order procured by Chandler to Specialty with prices quoted by defendants. (Verified Amended Complaint ¶ 24; Affidavit of Roger Weaver In Support of Specialty Chemicals' Motion For Preliminary Injunction ¶ 7 [FN1].)

> FN1. There are three affidavits of Roger Weaver pertinent to the instant motion. Affidavit of Roger Weaver In Support of Specialty Chemicals' Motion For Preliminary Injunction, filed with Plaintiff's Brief In Support of Its Motion for Preliminary Injunction as Exhibit "B", ("Affidavit of Roger Weaver"); Second Affidavit of Roger Weaver In Support of Specialty Chemicals' Motion for Preliminary Injunction, filed August 11, 1988 ("Second Affidavit of Roger Weaver"); and Supplemental Affidavit of Roger Weaver In Support of Specialty Chemicals' Motion For Preliminary Injunction, filed August 25, 1988 ("Supplemental Affidavit of Roger Weaver").

*2 On November 5, 1987, the Court issued a temporary restraining order prohibiting defendants from:

(a) disclosing chemical formulas or trade secrets obtained from Specialty while Chandler was in Specialty's employ;

(b) using or selling any chemical formulas or trade secrets obtained from Specialty while Chandler was in Specialty's employ;

(c) using product names or code numbers that are identical to or closely resemble the product names or code numbers of Specialty; and

(d) marketing, soliciting, or selling any product by making representations that the product is "exactly the same as" a product of Specialty's unless the product is generally known or generally available in the market place.

After the Court's November 5, 1987, order Chandler and Southern solicited orders for and sold products bearing product numbers so closely resembling those of Specialty that the products sold by the two companies remained inextricably linked in the minds of customers. Specifically, Chandler and Southern employed the following methods:

(a) Southern gave their products allegedly distinct numbers but accompanied the new numbers with a reference to the Specialty numbers. Southern accomplished this by placing in parentheses the words "formerly known as," followed by the commonly recognized Specialty number which defendants had copied.

(b) Southern's allegedly distinct numbers were merely the Specialty product numbers with one digit added to each numeral. For instance, Specialty's additive product SC-285 became Southern's "Additive 396" and Specialty's final rinse product SC-87 became Southern's "Final Rinse 198". This "system" was communicated to customers on at least one occasion by Chandler and other Southern employees. This enabled the potential purchasers to relate the "new" Southern product number to the Specialty product number with which they were familiar. This new numbering system was used by the defendants to circumvent the November 5, 1987, order. (Contempt Order ¶ 8, at 4-5.)

Chandler and Southern marketed, solicited orders for, and sold products through representations to customers and potential customers that Southern's products were "exactly the same as" Specialty's products. Some of the products at which these representations were directed do not appear to be generally known in the metal finishing industry or generally available in the market place. Rather, these products were formulated by Specialty through significant research and development efforts. Moreover, these products were often further refined to meet the exact specifications of particular customers. As a result, this Court found the defendants in contempt and imposed monetary sanctions by order entered April 2, 1988.

It is not yet known how many of Specialty's trade secret formulas were taken by Chandler and Southern. Defendants have admitted, however, that they have in their possession a copy of over fifty of Specialty's formulas. [FN2] It has been established that Chandler and Southern have wrongfully taken the following trade secret formulas from Specialty:

> FN2 Defendants assert that these formulas were sent to Chandler among the papers delivered when his office at Specialty was cleaned after his departure. This is a factual issue which will be resolved if it becomes an issue for trial.

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*3 (a) the formulas for Anoseal 1000 and Anoseal 2001 S which were found under the floor mats of Chandler's company car at the time Specialty terminated his employment;
(b) the formulas for products quoted to customers by Southern as being "exactly the same as" products of Specialty, including, but not limited to, SC- 60, SC-81, Anoseal 1000, SC-597, SC-640, SC-78, SC-592, SC-603, SC-14, SC-590, SC-400, SC-277, SC-73, SC-51, SC-420, SC-177, SC-508, SC-508A, SC-100, SC-139, SC-87 (Transcript of Contempt Hearing, April 4-5, 1988 ("Contempt Hearing Transcript") at 28-29); and
(c) the trade secret formulas contained in the file marked as Exhibit 3C to the deposition of Roger Weaver, including Anoseal 2001L (AS-2001L), SC-12, SC- 14, SC-18, SC-19, SC-33, SC-59, SC-73, SC-84, SC-87, SC-101, SC-150, SC-155, SC-240, SC-241, SC-271, SC-283, SC-318M, SC-400, SC-407, SC-501, SC-517, SC- 527W, SC-527, SC-560, SC-551, SC-602(b), SC-222MU, SC-222RP, WS-225R, SC-45, SC-43, SC-55, SC-38, SC-11, SC-235, WS-220RP, SC-70, SC-72, SC-82, SC-422, SC- 516, SC-272, SC-552, SC-562, SC-522.

Specialty's formulas, by necessity, are phrased in terms of exact percentages and concentrations of ingredients. (See, e.g., Declaration of Wayne D. Chandler, Exhibit 4, showing photostatic copies of Specialty formulas expressing ingredients, percentages, and concentration data.) Information as to percentages and concentrations of ingredients is the essence of Specialty's trade secrets. Defendants' evidence does not disclose this type of detailed information. Defendants' exper.'s affidavit (see Declaration of Lawrence J. Durney) and the supporting articles merely express the constituents in terms of a wide range of concentrations or express no concentration data at all. It is not at all apparent to the Court from a review of these documents that the Specialty formulas--including percentages and concentrations--are either disclosed by these documents or are available in the public domain.

The Court also notes that defendants' evidence addresses but 9 of the 67 or more formulas at issue here. Furthermore, defendants' expert rendered his opinion solely on an analysis of defendants' formulas because he claims that Specialty's formulas were unavailable to him. (Declaration of Lawrence J. Durney at ¶ 7.) Yet, defendants had 82 of Specialty's formulas and introduced those formulas as Exhibit 3C to Mr. Weaver's deposition. In sum, the Court concludes that defendants' evidence is outweighed by the testimony of Mr. Weaver that the formulas listed herein are trade secrets.

CONCLUSIONS OF LAW

To secure a preliminary injunction a plaintiff must establish four factors:
a. a substantial likelihood that plaintiff will prevail on the merits;
b. a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted;
c. that the threatened harm to plaintiff outweighs the possible harm to defendants should they be enjoined; and
*4 d. that the grant of an injunction will not disserve the public interest.

United States v. Alabama, 791 F.2d 1450, 1459 n. 10 (11th Cir.1986), cert. den. 107 S.Ct. 1287 (1987).

This Court issued its T.R.O. in this action upon a satisfactory showing by Specialty of the four criteria set out above. The criteria for a T.R.O. are quite similar to those required for a preliminary injunction. See Martin v. Attaway, 506 F.Supp. 603, 606 (S.D.Ga.1981) (T.R.O. criteria: "reasonable likelihood of success on the merits," "immediate and irreparable injury," "harm to plaintiff outweighs any possible harm to the defendants and to the public"). The evidence adduced to date by Specialty clearly satisfies both sets of criteria.

Specialty's request for preliminary injunctive relief is essentially directed against two types of misconduct: conversion of trade secrets and unfair competition. Defendants have no opposition to plaintiff's motion for a preliminary injunction on the unfair competition claims. Defendants state that they will accept a preliminary injunction that bars them from using product numbers similar to plaintiff's numbers and from representing that their products are "exactly the same as" Specialty's. (Defendants' Companion Memorandum at 1-2, 6-7.)

However, even without defendants' stipulations, Specialty has demonstrated that it is entitled to preliminary injunctive relief on the unfair

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competition issues. Specialty has demonstrated likely success on the merits through its evidence that defendants have adopted and used marketing practices that are likely to cause confusion among customers. Original Appalachian Artworks, Inc. v. Topps Chewing Gum, Inc., 642 F.Supp. 1031, 1037 (N.D.Ga.1986) (granting preliminary injunction on unfair competition claims). Specialty's evidence of confusion by Lanson Industries further supports its position. Id. at 1038; Savin Corp. v. National Toner Warehouse, Inc., 528 F.Supp. 636, 642-43 (N.D.Ga.1981).

Plaintiff has demonstrated a likelihood of irreparable injury. There is no way for plaintiff to prove which customers would have bought Specialty's products and in what quantities if defendants had not taken the formulas and sold them as their own. Also, the continued confusion of products by customers could cause irreparable future injury to plaintiff's business. Shatel Corp. v. Mao Ta Lumber and Yacht Corp., 697 F.2d 1352, 1357 (11th Cir.1983).

Finally, Specialty has shown that the balance of hardships rests in its favor and that public policy is served by granting its motion. This determination is based largely on the fact that defendants are only restrained from violating the law. Defendants cannot suffer compensable harm when enjoined from unlawful activity.

Specialty also seeks to restrain defendants from disclosing or using secret chemical formulas that defendants have misappropriated from Specialty, and from selling products based on those formulas. Defendants state that they will stipulate to a preliminary injunction against disclosure of the disputed formulas but seek to avoid restraints on their right to sell products based on the formulas. (Defendants' Companion Memorandum at 2,6.)

*5 But equity demands that defendants be prevented from selling products derived from formulas taken from Specialty. Chandler has admitted that his formulas are derived from Specialty's. These formulas may not be sold by defendant. If defendants discard these formulas based on Specialty's formulas and, in keeping with their argument that all the information is generally available, produce formulas independent of Specialty, there will be no possibility of violating this injunction. As the Seventh Circuit stated in American Can Co. v. Mansukhani, 742 F.2d 314, 328-9 (7th Cir.1984), even with independent improvements or modifications, a party cannot use another's trade secrets so long as their product is substantially derived from the trade secrets. Here, even though defendants subsequently modified the formulas, the evidence is clear that they were initially derived directly from Specialty's formulas.

Specialty has introduced sufficient evidence to demonstrate that it has a substantial likelihood of success on the merits of its trade secret conversion claims. The evidence shows that the disputed formulas were developed by Specialty at great expense, are kept secure under lock and key with access limited to authorized persons on a need-to-know basis, and are not generally known or available in the industry. Such formulas are trade secrets and can be legitimately protected through injunctive relief. University Computing Co. v. Lykes-Youngstown Corp., 504 F.2d 518, 534 (5th Cir.1974); Thomas v. Best Mfg. Corp., 234 Ga. 787, 789-90, 218 S.E.2d 68, 71 (1975).

The evidence also shows that Specialty imparted knowledge of and access to its trade secrets to defendant Chandler in confidence, in order to permit Specialty to apply those secrets to their intended uses. By misappropriating those trade secrets for his own use, Chandler breached that confidence. "[O]ne who, by reason of confidential business relations with the discoverer [of a trade secret], has gained possession of his trade secret, will be restrained by a court of equity from betraying the trust reposed in him by using the knowledge thus acquired for his own gain." Thomas, 234 Ga. at 790, 218 S.E.2d at 71 (quoting Stewart v. Hook, 118 Ga. 445, 447, 45 S.E. 369, 370 (1903)).

Specialty has also demonstrated the likelihood of irreparable harm should defendants not be restrained from disclosing, using, or selling the misappropriated trade secrets. The mere "[t]hreat of disclosure, destruction or dilution of [a] plaintiff's trade secrets constitutes irreparable injury justifying injunctive relief". CPG Prods. Corp. v. Mago Corp., 214 U.S.P.Q. (BNA) 206, 214 (S.D.Ohio 1981). In light of evidence showing that defendants possess a number of Specialty's trade secrets, the threat of disclosure or use is significant. Furthermore, the Court has previously found that

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FD-801 (Rev 7-15-97)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE **Date:** 02/01/2001

To: Counter-Terrorism **Attn:** Computer Investigations Unit, Room 11887, National Infrastructure Protection Center (NIPC)

From: WFO

Approved By:

Drafted By:

Case ID #: ✓

b6
b7C
b7E

Title: Subject: UNSUB(S)
Victim: NAVAL RESEARCH LAB; EXIGENT INTERNATIONAL - STI
Type:
Date: 01-30-01

SUBMISSION: X Initial ☐ Supplemental ☐ Closed

CASE OPENED: _____

CASE CLOSED: _____

☐ No action due to state/local prosecution
(Name/Number _____)
☐ USA declination
☐ Referred to Another Federal Agency
(Name/Number _____)
☐ Placed in unaddressed work
☐ Closed administratively
☐ Conviction

COORDINATION FBI Field Office _____
Government Agency _____
Private Corporation _____

VICTIM

Company name/Government agency Naval Research Laboratory
Address/location 4555 Overlook Avenue, SW, Washington, DC 20375
Purpose of System File Server
Highest classification of information stored in system Unclassified

b6
b7C